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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,662	07/08/2005	Hidenori Horie	123962	4113
25944 7590 10/18/2007 OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850			EXAMINER JONES, JAMES	
			ART UNIT 2873	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/541,662

Applicant(s)

HORIE, HIDENORI

Examiner

James C. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/3/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11 and 14 is/are rejected.
- 7) ☒ Claim(s) 8, 12, and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1,4,6,7, 9, and 11** are rejected under 35 U.S.C. 102(b) as being anticipated by Tate, Jr.(4105302) hereafter '302.

'302 discloses the limitations therein including the following:

Regarding **claim 1** '302 discloses an eyesight improving device (abstract) comprising(abstract): an eyepiece part(fig.2,col.7,ln.55-61 "116" and "214" as the "eyepiece part"); a target visually seen from the eyepiece part and capable of displaying a suitable figure(fig.2,col.8,ln.44-60 "202" as the "target" and "206" as the "suitable figure"); a target movement device which moves the target at a suitable speed between a far point and a near point each of which is positioned at a specified distance from the eyepiece part(fig.2, col.11,ln.58-66 "232" as the "movement device"); and a display control device which changes a size of the figure displayed on the target in proportion to a distance between the target and the eyepiece part (fig.2,abstract,col.10,ln.25-65,col.11,ln.61-68, and col.12,ln.1-11 the processor "100" as the "display control device"), so that a size of an image formed on a retina of a user's eye is kept constant while the target moves (fig. 2, col. 10, lines 25-65).

Regarding **claim 4** '302 discloses an eyesight improving device according to any

one of claim 1, wherein the target movement device moves the target by driving device(fig.2, servo motor "232" as the "driving device").

Regarding **claim 6** '302 discloses an eyesight improving device according to claim 4, wherein the driving device can change the movement speed of the target continuously(fig.2 "servo motor" as the "driving device").

Regarding **claim 7** '302 discloses an eyesight improving device according to claim 1, wherein the eyepiece part includes a convex lens(fig.2, col.9,ln.25-35 positive power lens "214" as the "convex lens").

Regarding **claim 9** '302 discloses an electric display which can display a suitable figure (fig. 2, col. 10, line 45-65 "202" as the "electric display"); a display control device which changes a size of the figure displayed on the electric display in proportion to the distance from the user(fig.2,abstract,col.10,ln.25-65,col.11,ln.61-68, and col.12,ln.1-11 the processor "100" as the "display control device"), so that a size of an image formed on a retina of a user's eye is kept constant while the electric display moves (fig. 2, col. 10, lines 25-65). With respect to the claimed "a distance measurement device which measures a distance from a user" all eyesight improving devices that require movement of the electric display and a symbol that is desirable to remain constant will inherently have a "distant measurement device which measures a distance from a user" so that the symbol can adjust appropriately.

Regarding **claim 11** '302 discloses an eyesight improving device according to claim 1, wherein the figure is ring-shaped(fig.2,col.8,ln.60-63).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tate, Jr.(4105302) hereafter '302 in view of Kohayakawa(5237351) hereafter '351.

Regarding **claim 3** '302 discloses as set forth above in claim 1, but does not specifically an electric display which displays the figure visually seen from the eyepiece part. '351 teaches that in an eye measuring apparatus having a display, driving means, and a visual target to display a symbol on a screen(col.2,ln.1-41) that it is desirable to have an electric display for the purpose of providing a visually displayed figure on the electric display(col.2,ln.1-41). Therefore, it would have been obvious to one of ordinary in the art at the time the invention was made for '302 to be modified to include an electric display since '351 teaches that in an eye measuring apparatus having a display, driving means, and a visual target to display a symbol on a screen that it is desirable to have a electric display for the purpose of providing a visually displayed figure on the electric display.

**Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tate, Jr.(4105302) hereafter '302 in view of Balliet(4408846) hereafter '846.

Regarding **claim 5** '302 discloses as set forth above but does not specifically disclose wherein the driving device can change the movement speed of the target

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stepwise. '846 teaches in an eye measuring apparatus having a driving means and a visual target to display a symbol(col.2,ln.55-67) that it is desirable to use a stepping motor for the purpose of incrementally moving the target toward and away from a the examinee(col.2,ln.55-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have '302 modified to use a stepping motor since '846 teaches in an eye measuring apparatus having a driving means and a visual target to display a symbol that it is desirable to use a stepping motor for the purpose of incrementally moving the target toward and away from a the examinee.

**Claims 2,10, and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tate, Jr.(4105302) hereafter '302.

Regarding **claim 2** '302 discloses as is set forth above but does not specifically disclose "two such eyepiece parts are provided, and a blocking device which blocks visual identification of the target". The examiner takes Judicial Notice that it is well known in the art of eye measuring, training, and testing devices to have eye blockers to for the purpose of covering one eye while the other eye is undergoing measuring, training or testing. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the eye examining apparatus of '302 include eye blockers as claimed since it is well known in the art of eye examining to use eye blockers for the purpose of covering one eye while the other eye is undergoing measuring, training or testing.

Regarding **claims 10 and 14** '302 discloses as set forth above but does not specifically disclose wherein the figure is displayed in one of red, green, blue, and white

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and the background of the figure is black as claimed. The examiner takes Judicial Notice that it is well known in the art of eye examining systems to use one of red, green, blue, and white on a black background for the purpose of clearly visually displaying a figure to be observed by an examinee from any determine distance. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the figure of '351 modified to be displayed in one of red, green, blue, and white and the background of the figure is black as claimed since it is well known in the art of eye examining systems to use one of red, green, blue, and white on a black background for the purpose of clearly visually displaying a figure to be observed by an examinee from any determine distance.

***Allowable Subject Matter***

**Claims 8, 12, and 13** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: with respect to the allowable claims, none of the prior art either alone or in combination disclose or teach of the claimed combination of limitations to warrant a rejection under 35 USC 102 or 103. Specifically, in reference to **claim 8**, none of the prior art either alone or in combination disclose or teach of the claimed eyesight improving device specifically including, as the distinguishing features in combination with the other limitations, the claimed "the target is directed in the same direction as the eyepiece part; reflecting device which faces the target and the eyepiece part and

reflecting device movement device which moves the reflecting device at a suitable speed between two specified points, instead of the target movement device”.

Regarding **claim 12-13**, none of the prior art either alone or in combination disclose or teach of the claimed eyesight improving device specifically including, as the distinguishing features in combination with the other limitations, the claimed “figure has such a size that when a distance from the eyepiece part is 25 cm, a maximum diameter is 1 cm or less”.

### ***Response to Arguments***

Applicant's arguments filed 8/3/2007 have been fully considered but they are not persuasive to overcome the Tate Jr. reference, however after the personal interview with the applicant's representative the Kohayakawa et al. reference has been withdrawn.

I. Applicant argues that Tate Jr. does not disclose a display control device which changes a size of the figure displayed on the target in proportion to a distance between the target and the eyepiece part, so that a size of an image formed on a retina of a user's eye is kept constant while the target moves. Nonetheless, Tate Jr. discloses the previous mentioned claim limitations (see fig.2, abstract, col.10, ln.25-65, col.11, ln.61-68, and col.12, ln.1-11 the processor “100” as the “display control device” and fig. 2, col. 10, lines 25-65).

II. Applicant argues that Tate Jr. only mentions controlling an apparent size of a symbol to remain constant to a subject to compensate for a difference between two power settings. However, Tate Jr. discloses that moving the screen “202” along optical



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path "114a" can effectively vary the spherical power of the system and the subject is to view the symbol on the screen alternately at two different powers, it is desirable that the apparent size of the symbol remain constant to the subject (col. 10, line 25-65, note that  $\text{power} = 1/(\text{focal length})$  and the power is changed each time the electric display is moved because the focal length is varied therefore, maintaining a constant symbol size between the two different power settings anticipates the claimed "a size of an image formed on a retina of a user's eye is kept constant while the target moves".

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Jones whose telephone number is (571) 270-

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1278. The examiner can normally be reached on Monday thru Friday, 8 a.m. to 5 p.m. est. time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James C. Jones 10/10/2007  
JCJ

  
JORDAN SCHWARTZ  
PRIMARY EXAMINER